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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/673,480
Filing Date: September 30, 2003
Appellant(s): FONG ET AL.

Jeffrey M. Measures
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 30, 2007 appealing from the Office action mailed September 21, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,870,408	Zdunek et al.	9-1989
4,670,899	Brody et al.	6-1987

5,796,722	Kotzin et al.	8-1998
6,278,701	Ayyagari et al.	8-2001
6,594,495	Salonaho et al.	7-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 3, 4 and 10** are rejected under 35 U.S.C. 102(b) as being anticipated by **Zdunek et al. (U.S. Patent # 4,870,408)**.

Consider **claim 1**, Zdunek et al. clearly show and disclose a method to dynamically allocate a number of data channels, reading on the claimed "carriers," on a trunked radio (***voice/data***) system **100**, reading on the claimed "wireless communications network," and to redistribute or balance data traffic load on the particular number of data channels currently available (column 2 lines 20-25, column 3 lines 11-12). The data activity is monitored during a predetermined interval and if the data activity is above a predetermined maximum, reading on the claimed "establishing a maximum load value for at least one of a voice or data traffic on a carrier," (column 2 lines 20-25 and 32-36). If data traffic is low, a data channel is ***reallocated*** for voice message only

providing superior access time and system performance, reading on the claimed "maintaining loading on said carrier at a level no greater than said established maximum load value by converting said carrier from voice and data traffic to voice-only traffic," (column 2 lines 37-44). It is known in the art that data channels support voice as well as data traffic (*the system is a trunked (voice/data) system that supports voice/data subscribers, therefore the system carries channels that support both voice and data traffic*). The network comprises at least one host computer **106**, which is coupled to a network controller **108** that monitors the activity on the data channels, and communicates with a central controller **102** that monitors the voice activity (column 3 lines 34-38, column 5 lines 27-29). If the central controller determines that voice activity has exceeded a predetermined threshold, the central controller requests the network controller to relinquish a data channel, reading on the claimed "converting said carrier from voice and data traffic to voice only traffic upon exceeding said established maximum load value, wherein said established maximum load value is a threshold defined to ensure acceptable quality of communications," (column 5 lines 38-41).

Consider **claim 3**, Zdunek et al. further disclose that the data activity is monitored during a predetermined interval and if the data activity is above a predetermined maximum, reading on the claimed "maximum load value is a data load value" (column 2 lines 20-25 and 32-36).

Consider **claim 4**, Zdunek et al. clearly show and disclose a method to dynamically allocate a number of data channels, reading on the claimed "carriers," on a trunked radio (***voice/data***) system, reading on the claimed "wireless communications network," and to redistribute or balance data traffic load on the particular number of data channels currently available (column 2 lines 20-25, column 3 lines 11-12). If data traffic is low, a data channel is ***reallocated*** for voice message only providing superior access time and system performance, reading on the claimed "dynamically managing relative voice and data call loading among one or more carriers to a prescribed quality of service level by converting said carrier from voice and data traffic to voice-only traffic," (column 2 lines 37-44). It is known in the art that data channels support voice as well as data traffic (*the system is a trunked (voice/data) system that supports voice/data subscribers, therefore the system carries channels that support both voice and data traffic*). The network comprises at least one host computer, which is coupled to a network controller that monitors the activity on the data channels, and communicates with a central controller that monitors the voice activity (column 3 lines 34-38, column 5 lines 27-29). If the central controller determines that voice activity has exceeded a predetermined threshold, the central controller requests the network controller to relinquish a data channel, reading on the claimed "converting said carrier from voice and data traffic to voice only traffic upon exceeding said established maximum load value, wherein said established

maximum load value is a threshold defined to ensure acceptable quality of communications," (column 5 lines 38-41).

Consider **claim 10**, Zdunek et al. clearly show and disclose a method to dynamically allocate a number of data channels, reading on the claimed "carriers," on a trunked radio (***voice/data***) system, reading on the claimed "wireless communications network," and to redistribute or balance data traffic load on the particular number of data channels currently available (column 2 lines 20-25, column 3 lines 11-12). The data activity is monitored during a predetermined interval and if the data activity is above a predetermined maximum, reading on the claimed "maximum level," (column 2 lines 20-25 and 32-36). If data traffic is low, a data channel is ***reallocated*** for voice message only providing superior access time and system performance, reading on the claimed "converting said carrier from voice and data traffic to voice-only traffic," (column 2 lines 37-44). It is known in the art that data channels support voice as well as data traffic (*the system is a trunked (voice/data) system that supports voice/data subscribers, therefore the system carries channels that support both voice and data traffic*). The network comprises at least one host computer, which is coupled to a network controller that monitors the activity on the data channels, and communicates with a central controller that monitors the voice activity (column 3 lines 34-38, column 5 lines 27-29). If the central controller determines that voice activity has exceeded a predetermined threshold, the central controller requests the network controller to relinquish a data channel, reading on the

claimed "call controller operable to maintain call loading on a carrier at a level not to exceed a predetermined maximum level for at lest one of voice or data traffic in the carrier by converting said carrier from voice and data traffic to voice only traffic upon exceeding said established maximum load value, wherein said established maximum load value is a threshold defined to ensure acceptable quality of communications," (column 5 lines 38-41).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. **Claims 2 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Zdunek et al. (U.S. Patent # 4,870,408)** in view of **Brody et al. (U.S. Patent # 4,670,899)**.

Consider **claim 2**, and **as applied to claim 1 above**, Zdunek et al. clearly show and disclose the claimed invention except that the predetermined maximum, reading on the claimed "maximum load value," is a voice load value.

In the same field of endeavor, Brody et al. clearly show and disclose balancing of loading of cells in a cellular mobile radio telephone system is performed by periodically determining the channel utilization of each cell, computing a representative voice channel occupancy level, reading on the claimed "voice load value," and attempting to hand-off calls, reading on the claimed "at least one of voice or data traffic," If a (voice) channel occupancy level exceeds a predetermined threshold level a call is transferred, reading on the claimed "established maximum load value is a voice load value" (abstract and column 7 lines 18-20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to establish the predetermined

maximum as that of the voice channel occupancy level, reading on the claimed "voice load value," as taught by Brody et al., the method and system of Zdunek et al., in order to balance call load efficiently.

Consider **claim 11**, and **as applied to claim 10 above**, Zdunek et al. clearly show and disclose the claimed invention except that that a handoff is effected between base station sectors or cell sites.

In the same field of endeavor, Brody et al. clearly show and disclose balancing of loading of cells in a cellular mobile radio telephone system is performed by periodically determining the channel utilization of each cell, computing a representative voice channel occupancy level, reading on the claimed "call load," and attempting to hand-off calls, reading on the claimed "at least one of voice or data traffic," from cells with higher voice channels occupancy levels to adjacent cells with lower voice channel occupancy levels. If a channel occupancy level, reading on the claimed "call load," for a first geographical area, reading on the claimed "base station sector or cell site," exceeds a predetermined threshold level, at least one call is transferred from a stationary transceiver serving the first geographical area to a stationary radio transceiver serving another predetermined geographical area overlapping the first area and also containing the mobile transceiver, reading on the claimed "control means operable to effect call handoff from a first base transceiver station sector or cell site to a second base transceiver sector or cell site upon attainment

of call loading for said at least one of voice or data traffic at a percentage of said predetermined maximum level" (abstract and column 7 lines 12-24).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to handoff calls between geographical areas, reading on the claimed "base transceiver station sector or cell site;" as taught by Brody et al., in the method and system of Zdunek et al., in order to balance call load efficiently.

7. **Claims 5, 9 and 15-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Zdunek et al. (U.S. Patent # 4,870,408)** in view of **Kotzin et al. (U.S. Patent # 5,796,722)**.

Consider **claim 5**, and **as applied to claim 4 above**, Zdunek et al. clearly show and disclose the claimed invention except that voice and data are maintained on different call carriers.

In the same field of endeavor, Kotzin et al. clearly show and disclose a multi-carrier wireless communication system that employs the use of handoff as a means for balancing the call traffic, reading on the claimed "voice and data call load," among a plurality of carriers within the communications system, reading on the claimed "voice and data loads are maintained on different call carriers" (column 2 lines 60-64).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to balance call traffic on multiple

carriers as taught by Kotzin et al., in the system of Zdunek et al., in order to allocate data channels for voice traffic to balance call load efficiently.

Consider **claim 9**, and **as applied to claim 4 above**, Zdunek et al. clearly show and disclose the claimed invention except that voice or data are move from a first to second carrier.

In the same field of endeavor, Kotzin et al. clearly show and disclose a multi-carrier wireless communication system that employs the use of handoff as a means for balancing the call traffic, reading on the claimed "voice and data call load," among a plurality of carriers within the communications system, reading on the claimed "voice and data loads are maintained on different call carriers" (column 2 lines 60-64). A metric is monitored and evaluated on a first of a plurality of carriers, and, if appropriate, a second carrier is identified, which has excess capacity available. Once a second carrier has been identified, the communication system will select a suitable subscriber candidate resident on the first carrier to handoff from the first carrier to the second carrier, thereby improving the metric associated with the first carrier, reading on the claimed "implementing a migration of at least a portion of said voice or data loading from a first carrier to a second carrier" (column 3 lines 7-15).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to balance call traffic by effecting a handoff between carriers as taught by Kotzin et al., in the system of Zdunek et

al., in order to allocate data channels for voice traffic to balance call load efficiently.

Consider **claims 15, 17 and 19**, and **as applied to claims 1, 4 and 10 above**, respectively, Zdunek et al. clearly show and disclose the claimed invention except that data channels are allocated for voice traffic by adding only voice while removing data.

In the same field of endeavor, Kotzin et al. clearly show and disclose a multi-carrier wireless communication system that employs the use of handoff as a means for balancing the call traffic among a plurality of carriers within the communications system, (column 2 lines 60-64). A metric of the wireless communication system is monitored and evaluated, which corresponds to the quality of the load on a first of a plurality of carriers, and a second carrier is identified which has excess capacity available. Once a second carrier has been identified, the communication system will select a suitable subscriber candidate resident on the first carrier to handoff from the first carrier to the second carrier, thereby improving the metric associated with the first carrier, reading on the claimed "converting said carrier from voice and data traffic to voice-only traffic is accomplished by admitting additional voice traffic to said carrier while removing data traffic by hard handoff onto any other available carrier having a lowest load value until loading on said carrier is reduced below said established maximum load value," (column 3 lines 7-15).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to balance call traffic by effecting a handoff between carriers as taught by Kotzin et al., in the system of Zdunek et al., in order to allocate data channels for voice traffic to balance call load efficiently.

Consider **claims 16, 18 and 20**, and **as applied to claims 1, 4 and 10 above**, respectively, Zdunek et al. clearly show and disclose the claimed invention except that data channels are allocated for voice traffic by adding only voice while migrating data traffic.

In the same field of endeavor, Kotzin et al. clearly show and disclose a multi-carrier wireless communication system that employs the use of handoff as a means for balancing the call traffic among a plurality of carriers within the communications system, (column 2 lines 60-64). A metric of the wireless communication system is monitored and evaluated, which corresponds to the quality of the load on a first of a plurality of carriers, and a second carrier is identified which has excess capacity available. Once a second carrier has been identified, the communication system will select a suitable subscriber candidate resident on the first carrier to handoff from the first carrier to the second carrier, thereby improving the metric associated with the first carrier, reading on the claimed "converting said carrier from voice and data traffic to voice-only traffic is accomplished by admitting additional voice traffic to said carrier while implementing a migration of data traffic onto any other available carrier

having a lowest load value until loading on said carrier is reduced below said established maximum load value," (column 3 lines 7-15).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to balance call traffic by effecting a handoff between carriers as taught by Kotzin et al., in the system of Zdunek et al., in order to allocate data channels for voice traffic to balance call load efficiently.

8. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Zdunek et al. (U.S. Patent # 4,870,408)** in view of **Ayyagari et al. (U.S. Patent # 6,278,701)**.

Consider **claim 6**, and **as applied to claim 4 above**, Zdunek et al., clearly show and disclose the claimed invention except that the quality of service level of the communication system is improved by adjusting base transceiver station transmit power.

In the same field of endeavor, Ayyagari et al. clearly show and disclose a method of enhancing the capacity of a CDMA cellular carrier supporting voice and multi-code data user which comprises the steps of setting a quality of service requirement for the data users based on the traffic load and the quality of service requirement for the voice users, and decreasing the received power level of the data users until their quality of service requirement is satisfied, reading on the claimed "base transceiver station transmit power is adjusted to maintain said prescribed quality of service level" (figure 1 and column 3 lines 16-21 and 24-25).

It is inherent in a CDMA cellular system or a wireless communications network that power in such a system is transmitted from a base station or base station transceiver.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to decrease the received power level, reading on the claimed "base transceiver station transmit power," to satisfy the quality of service requirement as taught by Ayyagari et al., in the method and system of Zdunek et al., in order to improve the capacity and quality of the communication system.

9. **Claims 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Zdunek et al. (U.S. Patent # 4,870,408)** in view of **Salonaho et al. (U.S. Patent # 6,594,495 B2)**.

Consider **claim 7**, and **as applied to claim 4 above**, Zdunek et al., clearly show and disclose the claimed invention except that intra-cell interference is maintained in order to improve the capacity and quality of the communication system.

In the same field of endeavor, Salonaho et al. clearly show and disclose a method and radio system in which a load can be optimally controlled at a connection and/or cell level. The signals **23** represent interference within a cell **1**, reading on the claimed "intra-cell interference," as these desired signals interfere with one another. Referring to equation (4) if the load **L** substantially

exceeds hat is allowed according to the predetermined threshold value K_t, the effect of the interference on the desired signals of the cell is reduced preferably by decreasing the data transmission rate of the desired signals, reading on the claimed "intra-cell interference is maintained below a prescribed level" (figure 2, column 2 lines 23-25, column 5 lines 51-53 and column 6 lines 9-14).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to reduce the effect of the interference within a cell, reading on the claimed "intra-cell interference," as taught by Salonaho et al., in the method and system of Zdunek et al., in order to improve the capacity and quality of the communication system.

Consider **claim 8**, and **as applied to claim 4 above**, Zdunek et al., clearly show and disclose the claimed invention except that inter-cell interference is maintained in order to improve the capacity and quality of the communication system.

In the same field of endeavor, Salonaho et al. clearly show and disclose a method and radio system in which a load can be optimally controlled at a connection and/or cell level. Signals of other cells arrive at the cell **1** from outside, the signals being interferences 13 in the cell, reading on the claimed "inter-cell interference". Referring to equation (4) if the load **L** substantially exceeds hat is allowed according to the predetermined threshold value K_t, the effect of the interference on the desired signals of the cell is reduced preferably by decreasing the data transmission rate of the desired signals, reading on the

claimed "intra-cell interference is maintained below a prescribed level" (figure 2, column 2 lines 23-25, column 5 lines 53-55 and column 6 lines 9-14).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to reduce the effect of the interference from outside a cell, reading on the claimed "inter-cell interference," as taught by Salonaho et al., in the method and system of Zdunek et al., in order to improve the capacity and quality of the communication system.

(10) Response to Argument

Appellants basically argue that Zdunek fails to anticipate the pending claims as Zdunek fails to teach each element of any of the claims. In particular, Zdunek fails to teach, or suggest, at least two limitations of each of the claims. First Zdunek does not teach *converting* a carrier *from* voice and data traffic *to* voice-only traffic, as claimed in each of the claims at issue, and that Zdunek relates to a different type of system, solves a different problem, and teaches a different solution than the present application. Zdunek only teaches the use of channels (frequencies) which are allocated either to voice or data. Zdunek does not teach or suggest the use of any channel that carries voice and data traffic as claimed. Zdunek teaches a system, which determines whether it should allocate another channel for data traffic, or relinquish a data channel, in order to reallocate the channel resources. Nowhere does the reference teach or suggest converting (only adding or relinquishing a channel frequency as a data channel) a carrier from voice and data to voice only.

With regards to Appellants arguments, Examiner respectfully disagrees. Zdunek et al. disclose a trunked system that carries both voice and data. In particular, the system supports three classes of subscribers: voice-only, data-only, and voice/data. Since the voice/data subscribers receive voice and data traffic, the channels must carry voice and data traffic. Also, Zdunek et al. disclose reallocating data channels to voice message channels. According to the American Heritage College Dictionary, to convert is *to* ***change from one use, function or purpose to another***. As discussed above, the trunked system carries both voice and data traffic. When the channels are

reallocated to support only voice, the ***use, function or purpose*** of the channel is changed.

Appellants further argue that Zdunek et al. do not teach that an established maximum load value is a threshold defined to ensure acceptable quality of communications. Even if the predetermined threshold of Zdunek may be equated arguendo with the established maximum load of value of the application in issue, which equivalency is denied, neither the cited passage, nor Zdunek in general, teach, suggest or mention that an established maximum load value is a threshold defined to ensure acceptable quality of communications. Zdunek simply does not teach or suggest a threshold defined to ensure acceptable quality of communications the present application we point out that each carrier in a wireless communication network that carries both voice and data has a quality of communications that is at least partly a function of the load of voice traffic on a carrier relative to the load of data traffic on the carrier. This is simply not taught or suggested by Zdunek (or the other references).

With regards to Appellants arguments, Examiner respectfully disagrees. Zdunek et al. teach that the voice activity, reading on the claimed "load," is monitored. Once this activity (load) exceeds a predetermined threshold, a data channel is relinquished (converted). Zdunek et al. further teach that the traffic load is balance by reassigning subscribers, thereby providing superior access time and system performance, reading on the claimed "acceptable quality of communications," (col. 2 lines 32-45). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., quality of

communications that is at least partly a function of the load of voice traffic on a carrier relative to the load of data traffic on the carrier) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim merely states that a threshold, either voice or data load) is defined to ensure acceptable quality of communications, and not that they are defined in a relation to each other.

Appellants also argue that Zdunek et al. do not teach or suggest the claimed subject matter of claims 1, 4 and 10. Examiner respectfully disagrees as discussed above.

Appellants also argue that the rejections (Zdunek et al. and Brody et al.) are improper and should be reconsidered because they fail to establish a prima facie case of obviousness. Examiner rejects claims 2 and 11 based on the subject matter of the present application without providing a motivation from the cited references nor providing any other evidence. The only motivation given by the examiner to combine these references is "in order to balance call load/traffic efficiently. It is argued that there is no motivation or suggestion to combine these references, apart from forbidden hindsight analysis based on the present application. Further, it is argued that Brody does not teach that an established maximum load value is a threshold defined to ensure acceptable quality of communications, and since Zdunek does not teach this limitation either, the combination of Brody and Zdunek fails to teach or reasonably suggest it.

With regards to Appellants arguments, Examiner respectfully disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, both Zdunek et al. and Brody et al. discuss load balancing. Zdunek et al. disclose balancing the traffic load (col. 2 lines 32-45) and Brody et al. disclose a load balancing technique for use in a cellular mobile radio telephone system (col. 26 lines 8-38). Also, Brody et al. is used to overcome the limitation "established maximum load value is a voice load value." As discussed above Zdunek et al. teach the limitation "established maximum load value is a threshold defined to ensure acceptable quality of communications."

Appellants also argue that with regards to claims 5, 9, and 15-20, Kotzin also does not teach the limitation of: "converting at least one of said one or more carriers from voice and data traffic to voice-only traffic upon exceeding a carrier load value defined to ensure acceptable quality of communications." Further, it is argued that there is not motivation to combine references.

With regards to the Appellants arguments, Examiner respectfully disagrees. Zdunek et al. is used to overcome this limitation as discussed above. Further both, Zdunek et al. and Kotzin et al. discuss load balancing.

Appellants also argue that with regards to claims 7 and 8, Salonaho also does not teach the limitation of: "converting at least one of said one or more carriers from voice and data traffic to voice-only traffic upon exceeding a carrier load value defined to ensure acceptable quality of communications." Further, it is argued that there is not motivation to combine references except for hindsight reasoning.

With regards to the Appellants arguments, Examiner respectfully disagrees. Zdunek et al. is used to overcome this limitation as discussed above. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Further both, Zdunek et al. and Salonaho et al. discuss load balancing and load control.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jaime Holliday

Conferees:

Joseph Feild, SPE, AU 2617

JOSEPH FEILD
SUPERVISORY PATENT EXAMINER

George Eng, SPE, AU 2617

GEORGE ENG
SUPERVISORY PATENT EXAMINER